IN THE HIGH COURT OF UTTARAKHAND AT

NAINITAL

Criminal Appeal No. 103 of 2006
(Old No.2865 of 1987)

Suraj Singh Panwar s/o Shri Ganga
R/o Kudiyali P. O. Vinakhai Patti Thatika-Thur
District Tehri Garhwal .... Appellant

Vs

State of U.P. ....Respondent

Sri Lokendra Dobhal, Advocate, for the appellant.
Learned A.G.A. for the respondent.

Dated: November 22, 2007

Hon'ble B.C. Kandpal, J.

This has been preferred against the judgment and order dated 11.11.1987 passed by Sessions Judge, Chamoli, thereby convicting the accused/appellant u/s 3/7 Essential Commodities Act and sentencing him to undergo R.I. for a period of 3 (Three) months and a fine of Rs. 1500/-, in default of payment of fine the accused/appellant shall undergo further sentence of three months R.I.

Brief stated the prosecution case is that on 17.12.1986 accused/appellant accompanied by co-accused Girish Chandra Dangwal (owner of the truck) and Govind Singh (driver of the truck) was transporting two hundred bags of cement from Cement Store House Pokhari to Cement Store House Pawon, through Truck No. UTS 1109. On the way of Pawon, they sold twenty five bags of cement to Dheer Singh @ Rs. 61/- per bag and collected Rs. 1530/- as the price of these twenty five bags of cement. Meantime, S.D.M. Ukhimath, Sri G.D.

Tripathi while returning back to Ukhimath via Pokhari route on his government jeep arrived there at Saterakhal, saw Truck No. UTS 1109 standing there and the cement bags were unloaded there on the road side. Sri Tripathi got down from the jeep and came near the truck and enquired who was purchasing the cement; the truck driver speeded the truck and moved it fast towards Rudraprayag. The truck driver was on the truck, Sri Tripathi instructed his driver of the jeep to chase the truck and to bring he truck round; that Dheer Singh who was standing nearby informed Sri Tripathi S.D.M. that he purchased this unloaded cement from accused/appellant Surat Singh Panwar (Thekadar) at the rate of Rs. 61/- per bag for constructing his house, and he had purchased twenty five bags of cement; that the truck was brought back along with the driver and truck owner to Saterakhal. Sri Tripathi enquired from Govind Singh (truck driver) and Girish Chand Dangwal (truck owner) where are the papers relating to this cement transportation and they told Sri Tripathi that Thekedar Surat Singh Panwar was carrying this cement on their truck and Surat Singh Panwar was left here at Saterakhal and he has slipped away from this place. Sri Tripathi S.D.M. counted the cement bags on the truck and they were seventy five bags in number, and Sri Trapathi counted the cement bags stored and lying on the road and they were found twenty five bags in all, and Sri Tripathi got re-loaded all the twenty five bags of cement in that truck and Sri Tripathi brought the loaded truck along with truck driver Govind Singh and truck owner Girish Chandra Dangwal to the nearby Police Outpost Agustmuni. Sri Tripathi lodged the report (Ext.

Ka. 1) at this Police Outpost and hander over the truck with loaded cement and truck driver Govind Gingh and truck owner Girish Chandra Dangwal to Sri L. K. Awasthi Incharge Police Outpost Agustmuni and case was registered.

Sri L. K. Awasthi Incharge Police Outpost, Agustmuni, during investigation, recorded statements of Sri G.D Tripathi, S.D.M. as well as co-accused Govind Singh (truck driver) and Girish Chandra Dangwal (truck owner). Sri Awasthi also recorded statement of Sri Heera Singh store keeper and also took into his custody the receipt, challan, and store register (Exts. 2 to 4). The memo is Ext. Ka.8.

The accused Surat Singh Panwar was absconding and surrendered in the court of C.J.M. After investigation, the police submitted the charge sheet against the accused persons on 2.5.1987.

The prosecution in order to prove its case examined Sri G.D. Tripathi S. D. M. Ukhimath (PW-1), Sri Heera Singh Store Keeper Pokhari Store (PW-2), Sri Harish Chandra Thapliyal Junior Engineer at Rudraprayag Incharge Pokhari Store (PW-3), Sri Chhote Lal Junior Engineer Srinagar Incharge Powan Store (PW-4), Sri Indra Mohan Singh (PW-5), Sri Dheer Singh (PW-6) and Sri Lakshmi Kant Awasthi Investigation Officer (PW-7).

The accused/appellant Surat Singh Panwar has stated that he obtained the cement on 17.12.86 and got it loaded in Truck No. UTS 1109, but he did

not ride or accompany the truck and did not come to Saterakhal.

The co-accused Sri Girish Chandra Dangwal (truck owner) state that cement was not unloaded at Saterakhal and truck simply stopped at Saterakhal at the instance of Surat Singh Panwar, who was sitting in the truck and Surat Singh Panwar got down at Saterakhal to meet certain village-men. He stated further that S.D.M. arrived there and on his enquiry he told him that the cement belongs to Surat Singh Panwal (Thekedar).

The co-accused Sri Govind Singh (Truck Driver) also stated that cement was not unloaded/sold and that truck stoppend at Saterakhal and S.D.M. enquired about the cement and demanded the papers and that Surat Singh Thekedar, who processed had gone to meet the village-men.

The trial court after hearing learned counsel for the parties and having perused the entire evidence available on record, found the accused/appellant guilty and sentenced him a three months rigorous imprisonment and a fine of Rs. 1500, in default of payment of fine, undergo a further sentence of three months rigorous imprisonment.

However, the trial court found co-accused Govind Singh and Girish Chandra Dangwal not guilty and acquitted them of the charges levelled against them on the ground that these accused persons were owner and driver and they had no role in commission of the crime as they were

transporting the cement at the instance of the accused/appellant in good faith.

Feeling aggrieved by the aforesaid judgment and order, the accused/appellant has preferred this appeal before this Court.

Heard learned counsel for the parties and perused the record.

Admittedly, the accused Surat Singh Panwar was a contractor and he was given cement from Pokhari Cement Store House of the Irrigation Department and the same was loaded in Truck No. UTS 1109. The S.D.M. Sri G. D. Tripathi (PW-1) arrived at the spot near Saterakhal where the accused and the owner and driver of the truck were selling twenty five bags of cement to Dheer Singh. These bags were unloaded from the truck. Dheer Singh told that the said cement was sold to him at the rate of Rs. 61/- per bag, which he needed for construction of his house. The S.D.M. himself lodged the report at the Police Outpost Agustmuni. The matter was investigated by the police. The Executive Engineer Irrigation Sri Kashi Prasad issued certificate Ext. Ka.15 to the effect that the cement supplied to Surat Singh Panwar on 17.12.1986 was levy cement, therefore, violation of U.P. Cement Control Order, 1973 has been done in the case.

The prosecution in order to prove its case examined PW-1, Sri G.D. Tripathi, S.D.M. who has intercepted the truck and found the illegal sale of the cement bags. This witness has proved on oath the prosecution case. PW-2 Heera Singh Store keeper has proved that on 17.12.86 he had

supplied two hundered cement bags to contractor, Surat Singh Panwar, who had transported the same in Truck. PW-3, Harish Chandra Thapliyal, Junior Engineer and PW-4 Chhote Lal, Junior Engineer, have supported the supply of cement to the Contractor on the relevant date. PW-6, Dheer Singh is the person to whom twenty five bags of cement was sold by the accused. This witness has given categorical statement that he has purchased 25 bags of cement from the accused for construction of his house and paid Rs. 1530/- of its price. He also corroborated the prosecution version that S.D.M. had reached at the spot and had loaded twenty five bags of cement and returned his money. PW-5, Indra Mohan Singh is the independent eye-witness of the incident. How witness has fully corroborated the prosecution case.

Therefore, in view of evidence on record, I am of the view that the accused/appellant Surat Singh Panwar has committed the offence of violation of U.P. Cement Control Order, 1973. The prosecution has been successful in establishing its case against the accused/appellant. I do not find any illegality and impropriety in the impugned judgment and order.

The appeal lacks merit ant is liable to be dismissed.

Accordingly, the appeal is dismissed. The impugned judgment and order dated 11.11.1987 passed by Sessions Judge, Chamoli, is hereby confirmed.

The accused/appeal is on bail. His bail bonds are cancelled and sureties discharged. He shall

taken into custody forthwith to serve out the sentence awarded to him.

Let the record be transmitted to trial court for compliance.

(B.C. Kandpal, J.)

SP